

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Evelis Otero	Team: Team # 6	CCRB Case #: 200809529	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 06/21/2008 11:19 PM	Location of Incident: 2000 Grand Avenue	Precinct: 46	18 Mo. SOL 12/21/2009	EO SOL 12/21/2009	
Date/Time CV Reported Thu, 07/03/2008 4:52 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Thu, 07/03/2008 4:52 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Rafael Perdomo	21268	942338	046 PCT
2. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gypsy Pichardo	00861	942353	046 PCT
2. POM Primitivo Montanez	28882	939058	046 PCT
3. POM Tommy Youkhan	13950	942889	041 PCT
4. POF Merlyn Brito	29834	942760	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Rafael Perdomo	Force: PO Rafael Perdomo used physical force against § 87(2)(b)	
B.POM Rafael Perdomo	Force: PO Rafael Perdomo struck § 87(2)(b) with a blunt instrument.	
C. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon ethnicity.	

Synopsis

§ 87(2)(b) filed a complaint in-person at the CCRB on July 3, 2008. On June 21, 2008, at approximately 11:19pm, § 87(2)(b) who is a cab driver, was inside of his vehicle in the vicinity of 2000 Grand Avenue in the Bronx. PO Rafael Perdomo of the 46th Precinct approached § 87(2)(b) and requested his license and registration. § 87(2)(b) complied and PO Perdomo issued him a double parking summons. § 87(2)(b) disputed the summons and PO Perdomo allegedly pulled § 87(2)(b) out of the vehicle and struck him against the face multiple times with an open hand (**Allegation A**). PO Perdomo allegedly struck § 87(2)(b) three times against the chest with a blunt object (**Allegation B**). § 87(2)(b) was then handcuffed and placed inside of a marked police van, where an unidentified officer called § 87(2)(b) a “fucking Dominican.” (**Allegation C**) § 87(2)(b) was transported to the 46th Precinct Stationhouse, where he was released with a disorderly conduct summons.

§ 87(2)(b), § 87(2)(g)

This case was originally assigned to Investigator Emily Hainze on July 3, 2008, and was reassigned to Investigator Evelis Otero on June 3, 2009, upon her resignation.

Summary of Complaint

§ 87(2)(b) was treated at § 87(2)(b) on June 28, 2008 (enc. 16-A – 16-B). § 87(2)(b) did not make any statements to medical personnel regarding this incident. § 87(2)(b) filed a complaint in-person at the CCRB on July 3, 2008 (enc. 3-A – 3-B, 4-A – 4-D). § 87(2)(b) is a § 87(2)(b)-old, 5’ 5”, Hispanic male with brown eyes. The interview was conducted in Spanish. § 87(2)(b) filed a notice of claim on September 11, 2008 (enc. 19-A – 19-B). The statements § 87(2)(b) provided to the CCRB and the statements within the notice of claim were generally consistent and are summarized as follows, with any discrepancies noted.

On June 21, 2008, at approximately 11:19pm, § 87(2)(b) who is a cab driver, was responding to a pick-up at 2010 Grand Avenue in the Bronx. As § 87(2)(b) pulled up between 2000 Grand Avenue and 2010 Grand Avenue, a marked police van, which was behind him, beeped. When § 87(2)(b) was stationary between 2000 Grand Avenue and 2010 Grand Avenue, the police vehicle pulled up alongside him and the officer operating the vehicle, identified by § 87(2)(b) as PO Rafael Perdomo, looked at him. PO Perdomo exited his vehicle, approached § 87(2)(b) and asked him for his license and registration and he complied. PO Perdomo proceeded to issue § 87(2)(b) a double parking summons. There were four additional officers in the police vehicle, who were identified through the investigation as PO Merlyn Brito, PO Tommy Youkhan and PO Primitivo Montanez. The fourth officer was identified by § 87(2)(b) as PO Gypsy Pichardo. § 87(2)(b) obtained PO Perdomo and PO Pichardo’s names and tax identification numbers from the summonses he received as a result of this incident.

§ 87(2)(b) questioned PO Perdomo regarding why he had issued him a parking violation when he wasn’t parked. PO Perdomo then opened the driver-side door to § 87(2)(b)’s vehicle, unbuckled § 87(2)(b)’s seatbelt, grabbed him by the shirt and the arm and pulled him out of the vehicle. § 87(2)(b) had not previously exited his car or unbuckled his seat belt because he was worried about the use of physical force against him or that the officer would think he was reaching for a weapon. § 87(2)(b) is unaware of where the other officers were at this time or if they had exited the vehicle.

Once § 87(2)(b) was out of the vehicle, PO Perdomo struck him several times in the face with an open hand. PO Perdomo also struck § 87(2)(b) against the chest with a silver-colored metal bar of some sort three times. PO Perdomo then handcuffed § 87(2)(b) placed him inside of the marked van and transported him to the 46th Precinct Stationhouse.

While § 87(2)(b) was inside of the van, an officer, whom § 87(2)(b) could not describe or otherwise identify, stated to him in Spanish that he had been “saved from a beating” and then referred to § 87(2)(b) as a “fucking Dominican.” This was inconsistent with what § 87(2)(b) stated within the notice of claim, as he stated that PO Perdomo said, “That’s what happens to all fucking Dominicans,” and that the aforesaid comment was said as he was struck with a blunt object and not while he was inside of the

marked van. At the station house, § 87(2)(b) requested to be taken to the hospital. An unidentified officer told him that if he went to the hospital that he would be there for three days. § 87(2)(b) then declined to be taken to the hospital. § 87(2)(b) was issued a summons for disorderly conduct by PO Pichardo and released from the stationhouse.

Results of Investigation

Identification of officers interviewed

§ 87(2)(b) identified PO Pichardo and PO Perdomo by name and tax identification number, which he obtained from the summons issued to him on the day of the incident. PO Pichardo and PO Perdomo identified PO Brito, PO Youkhan and PO Montanez as their partners on the day of the incident. As a result, all of the aforesaid officers were interviewed at the CCRB.

PO Rafael Perdomo, 46th Precinct

CCRB Statement: PO Perdomo (Subject Officer)

PO Rafael Perdomo was interviewed at the CCRB on September 28, 2009 (enc. 13-A – 13-B). PO Perdomo is a § 87(2)(b). On the day of the incident, PO Perdomo was on duty, in uniform, assigned to marked van # 5476 and partnered with PO Tommy Youkhan, PO Primitivo Montanez, PO Gypsy Pichardo and PO Merlyn Brito.

On June 21, 2008, PO Rafael Perdomo, PO Tommy Youkhan, PO Primitivo Montanez, PO Gypsy Pichardo and PO Merlyn Brito were inside of a marked patrol van, driving in the vicinity of 2000 Grand Avenue in the Bronx. As they drove on Grand Avenue, which is a narrow one-way street, they observed a double-parked livery cab, which was operated by an individual, who they later learned was § 87(2)(b). There were no civilians in § 87(2)(b)'s vehicle or in the immediate vicinity. The officers could not continue driving down Grand Avenue, because § 87(2)(b)'s vehicle obstructed them from doing so. The officers beeped their horn, notifying § 87(2)(b) that he needed to move. § 87(2)(b) did not comply. No verbal commands were issued to § 87(2)(b). The officers had difficulty maneuvering their vehicle around § 87(2)(b)'s vehicle, but were ultimately successful in doing so. PO Perdomo and PO Pichardo exited their vehicle and approached § 87(2)(b)'s vehicle. PO Tommy Youkhan, PO Primitivo Montanez and PO Merlyn Brito did not exit their vehicle and did not become involved at any point during the incident.

Upon approaching § 87(2)(b)'s vehicle, PO Pichardo engaged him in conversation, while PO Perdomo proceeded to write a double parking summons. PO Perdomo could not recall the conversation between PO Pichardo and § 87(2)(b). PO Perdomo did not speak to § 87(2)(b) at this time. § 87(2)(b) appeared to be upset and called the officers “abusadores,” stating in Spanish that he believed that the officers were abusing their authority. PO Perdomo finished writing the summons and attempted to hand it to § 87(2)(b) who slapped the summons out of PO Perdomo's hand, causing it to fall to the ground. PO Perdomo ordered § 87(2)(b) to pick up the summons. § 87(2)(b) refused, stating that he was “not going to pay for that ticket.” PO Perdomo instructed § 87(2)(b) to pick up the summons approximately three times, explaining that he was littering, but § 87(2)(b) failed to comply. PO Perdomo informed § 87(2)(b) that he was under arrest and opened the driver's side door of § 87(2)(b)'s vehicle and attempted to remove § 87(2)(b)'s seatbelt. § 87(2)(b) shifted his body to the right, leaning across the front passenger seat, as if attempting to flee. PO Perdomo successfully removed § 87(2)(b)'s seatbelt, grabbed him by one leg and his belt and pulled him. § 87(2)(b) grabbed onto the steering wheel, refusing to exit the vehicle. PO Pichardo also grabbed § 87(2)(b) and assisted PO Perdomo in forcibly removing § 87(2)(b) from the vehicle. PO Perdomo and PO Pichardo forcibly placed § 87(2)(b)'s hands behind his back and handcuffed him. § 87(2)(b)'s body did not make contact with any part of the vehicle when he was forcibly removed. PO Perdomo indicated that it was not required to use much physical force to overcome § 87(2)(b)'s resistance, because he was older and had a small build. PO Perdomo and PO Pichardo did not strike § 87(2)(b) in the face, or otherwise strike him with an asp, baton, metal tube or other blunt object. PO Perdomo and PO Pichardo placed § 87(2)(b) in their vehicle and transported him to the 46th Precinct. PO Perdomo did not use profanity or say, “fucking Dominican.” PO Perdomo indicated that he is Dominican and stated that it would be absurd to call another civilian a “fucking Dominican,” when he in fact is a Dominican. PO Perdomo did not hear any officers use profane language at any point during the incident.

While inside of the 46th Precinct stationhouse, PO Perdomo observed § 87(2)(b) sitting slumped over in the holding cell. PO Perdomo asked § 87(2)(b) if he wanted medical treatment, but he did not respond. PO Perdomo did not observe injuries on § 87(2)(b)'s person. § 87(2)(b) did not complain of pain or injuries and did not request medical treatment. § 87(2)(b) was released from the precinct with a disorderly conduct summons.

PO Gypsy Pichardo, 46th Precinct

CCRB Statement: PO Pichardo (Witness Officer)

PO Gypsy Pichardo was interviewed at the CCRB on April 10, 2009 (enc. 7-A – 7-B). PO Pichardo is a § 87(2)(b). Hispanic male with black hair and green eyes. PO Pichardo confirmed that he worked the same tour and assignment as his partner, PO Perdomo. PO Pichardo kept the following memo book entries regarding the incident: at 2330 hours: Car stop at 2000 Grand Avenue; at 2333 hours: (10-92) Disorderly conduct in regards; at 2335 hours: (10-84) 46th PCT; at 2358 hours: Prisoner released on a summons, defendant § 87(2)(b) (enc. 6-A – 6-C).

PO Pichardo's testimony was consistent with that of PO Perdomo's and is summarized as follows, with the following additions or exceptions. The officers turned on their lights and siren to signal to § 87(2)(b) to move his vehicle. The officers kept their lights and sirens on for ten to fifteen seconds. PO Perdomo asked § 87(2)(b) for his license and registration. § 87(2)(b) did not comply and PO Perdomo had to ask three or four times before § 87(2)(b) gave it to him. PO Pichardo did not remember whether the summons was for double parking or obstructing traffic.

PO Perdomo and PO Pichardo ordered § 87(2)(b) to get out of the car. After ordering § 87(2)(b) to step out of the car and pick up the summons at least four times, the officers pulled § 87(2)(b) out of the car. PO Pichardo did not recall which officer opened the car door. The officers pulled on § 87(2)(b)'s arms and hands. Each officer held one arm. § 87(2)(b) continued to refuse, yell and curse. PO Pichardo did not remember what § 87(2)(b) said specifically. It took the officers approximately 20 seconds to get § 87(2)(b) out of the car. § 87(2)(b) did not have his seat belt on. § 87(2)(b) was disorderly, angry, and cursing in Spanish at the officers on the way to the station house. § 87(2)(b) did not receive any injury. At no point did the officers take out their asp. At no time did the officers take out blunt objects or pepper spray. At no time did the officers strike § 87(2)(b) on the body or face. At no point did any of the officers call § 87(2)(b) a "fucking Dominican." § 87(2)(b) did not ask the officers to go to the hospital or complain of pain.

PO Merlyn Brito

PO Thomas Youkhan

PO Primitivo Montanez

Witness Officers

PO Brito and PO Youkhan were interviewed at the CCRB on September 1, 2009, and PO Montanez was interviewed on October 13, 2009 (enc. 9-A – 9-B, 11-A – 11-B, 15-A – 15-B). PO Brito is a § 87(2)(b). PO Youkhan is a § 87(2)(b). PO Montanez is a § 87(2)(b). None of the aforesaid officers kept memo book entries regarding this incident. On the day of the incident, all of the aforesaid officers were on duty, in uniformed and assigned to marked van # 5476.

All of the aforesaid officers did not recall the incident. A brief synopsis was provided to these officers, which did not aid their recollection of the incident.

Medical Documents

§ 87(2)(b) was treated at § 87(2)(b) on June 28, 2008 (enc. 16-A – 16-B). The medical documents revealed no information as to why § 87(2)(b) appeared at the hospital on § 87(2)(b). The medical records did reveal that § 87(2)(b)'s pain description on the intensity scale was listed as a 10, indicating worst pain. § 87(2)(b) was prescribed 400mg of Ibuprofen. It should be noted that § 87(2)(b) sent a large amount of hospital records dating back to 2003 for § 87(2)(b). In 2008, § 87(2)(b) was treated at least once a month because he has chronic pain to his ankle, abdominal distension

and hypocholesterol. § 87(2)(b) visited § 87(2)(b) on numerous occasions after this incident and none of the history lists or indicates any injuries, allegations of force or pain to chest. Moreover, § 87(2)(b) scheduled appointments in 2008, so it appears that he went on § 87(2)(b) for a scheduled appointment, which may explain why he waited seven days to receive any treatment.

Police Department Documents

The command log from the 46th Precinct on the day of the incident listed PO Pichardo as the arresting officer for § 87(2)(b) (enc. 17-A). § 87(2)(b)'s physical and mental conditions were listed as "apparently normal." The prisoner holding pen roster from the 46th Precinct on the day of the incident indicated that § 87(2)(b) was brought into the cells at 11:35pm and released at 12:01am on a summons (enc. 18-A). Summons number § 87(2)(b) was issued to § 87(2)(b) for double parking on the day of the incident by PO Perdomo (enc. 12-A). Summons number § 87(2)(b) was issued to § 87(2)(b) for disorderly conduct on the day of the incident by PO Pichardo (enc. 5-A).

§ 87(2)(b)

(enc. 2-A).

CCRB History of Subject Officer

PO Rafael Perdomo has had one substantiated allegation at the CCRB in his 3 years of service with the NYPD (enc. 1-A – 1-B). In CCRB Case No. 200807227, the allegation was force (other blunt object as club). CTS does not have any information regarding the NYPD disposition for this case.

§ 87(2)(b), § 87(2)(a) 160.50

Criminal Conviction History

§ 87(2)(b) does not have a criminal conviction history in the state of New York.

Notice of Claim

§ 87(2)(b) filed a notice of claim on September 11, 2008 (enc. 19-A – 19-B). § 87(2)(b) is suing the City of New York for \$3,000,000.00. The outcome of the notice of claim is still pending.

Conclusions and Recommendations

Subject Officer Identification

§ 87(2)(b) alleged that PO Perdomo used physical force against him and struck him with a blunt object. § 87(2)(b) identified PO Perdomo by name and tax identification number, which he obtained from the summons issued to him on the day of the incident. PO Perdomo's CCRB statement confirmed his involvement in the incident. As a result, Allegations A and B are being pleaded against PO Perdomo.

§ 87(2)(b) also alleged that an officer, whom he could not identify or otherwise describe, used offensive language towards him. The investigation could not determine the identity of the subject officer for the aforesaid allegation. Consequently, Allegation C is being pleaded against "An officer."

Undisputed Facts

It is undisputed that physical force was used against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegations Not Pleaded

A refusal to obtain medical treatment is not being pleaded because § 87(2)(b) admitted that he refused medical attention. A discourtesy allegation is not being pleaded because it is being subsumed within the offensive language allegation.

Allegation A: PO Rafael Perdomo used physical force against § 87(2)(b)

§ 87(2)(b), § 87(2)(g)
Patrol Guide Procedure 203-11,
which states that officers must use minimum force necessary to effect an arrest (enc. A-B). § 87(2)(g)

Allegation B: PO Rafael Perdomo struck § 87(2)(b) with a blunt instrument.

§ 87(2)(b), § 87(2)(g)

Allegation C: An officer made remarks to § 87(2)(b) based upon ethnicity.

§ 87(2)(b), § 87(2)(g)

Investigator: Evelis Otero

Date: November 13, 2009

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: